

A LETTER

TO THE

HON. DANIEL WEBSTER,

ON THE POLITICAL AFFAIRS

OF THE

UNITED STATES.

BY MARCELLUS.

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TO THE

HONOURABLE DANIEL WEBSTER.

SIR,

In your public addresses or speeches, and in those of other gentlemen of high political distinction, I have often seen an opinion expressed like this—That *intelligence* and *virtue* are the basis of a republican government, or that intelligence and virtue in the people are necessary to the preservation and support of a republican government. These words, *intelligence* and *virtue*, are very comprehensive in their uses or application, and perhaps too indefinite to furnish the premises for the inference deduced from them. Men may be very intelligent in some departments of literature, arts and science; but very ignorant of branches of learning in other departments. By intelligence, as applicable to political affairs, it may be presumed that those who use the term, intend it to imply a correct knowledge of the Constitution and laws of the country, and of the several rights and duties of the citizens.

But, Sir, the opinion that intelligence in the people of a country will preserve a republican government, must depend, for its accuracy, on the fact of an intimate, or necessary connection between *knowledge* and *principle*. It must suppose

that men who *know* what is right, will *do* what is right: for if this is not the general fact, then intelligence will not preserve a just administration, nor maintain the constitution and laws. But from what evidence can we infer that men who *know* what is right will *do* what is right? In what history of mankind, political or ecclesiastical, are the facts recorded, which authorize the presumption, much less the belief, that correct action will proceed from correct knowledge? Such an effect would imply the absence of all depravity in the hearts of men; a supposition which not only revelation, but all history forbids us to admit.

Let me ask, Sir, whether the Greeks, and particularly the Athenians, were not an intelligent people? Were they not intelligent when they banished the ablest statesmen and generals, and the purest patriots of their state? Was their intelligence sufficient to insure, at all times, a just administration of the laws? In short, if intelligence could preserve a republic, why were not the Grecian republics preserved?

Then let us turn our attention to the Roman state. Were not Sylla and Marius intelligent men, when they rent the commonwealth with faction, and deluged Rome with blood? Were not Cæsar and Anthony and Lepidus, and Crassus and Brutus and Octavianus, intelligent men? Did not the Roman commonwealth fall into ruins in the most enlightened period of its existence? And were not the immediate instruments of its overthrow some of the most intelligent men that the pagan world has produced?

Then look at France during the revolution, when there was no settled government to control reason. Were not the leading men of the parties intelligent men?—men who

cut off the heads of their opponents with as little ceremony as they would tread a worm under their feet, and for the *sake of liberty*. When one party was crushed, the others cried out, the *republic or liberty is safe*. When another party fell under the guillotine, then the triumphant party shouted *liberty is safe*. But after all the republic was *not* saved; and all parties at last were glad to find peace and security under a throne.

Intelligence alone then has not yet saved any republic. But intelligence, it is said, must be accompanied with *virtue*, and these united are to give duration to a republic.

Now, Sir, what is this *virtue*; what does it mean in the sentiment or opinion above cited? What did Montesquieu intend by *virtue*, when he wrote about its influence in preserving a republic?—*Spirit of Laws, passim*.

The virtue of a Roman citizen consisted in personal bravery, and in devotion to the defence and extension of the commonwealth. In particular men there existed a strong sense of right or political duty, which may take rank as a moral virtue. But such instances were rare, and most rare in the decline of the commonwealth, when the citizens were most intelligent. But in general, the virtue of the Romans was a passionate attachment to the commonwealth, for the grandeur of which they fought and conquered, till they had brought the civilized world to the feet of the republic. This *virtue* extended the dominion, but did not secure the existence of the republic.

If by *virtue* is intended the observance of the common social duties, this may proceed from a respect for custom,

and a regard to reputation; and either with or without better principles, is a useful practice.

But such virtue as this will not save a republic, unless based on better principles than a regard to custom or to reputation. The reason is obvious; such morality will often, not to say generally, yield to selfishness; that is, to the ambition of obtaining power and wealth. When strongly tempted by private interest, men often find the means of enlisting reason in its service; and invent excuses for disregarding the *public good*, which *ought* to be, and for the preservation of republican government, *must be*, the ruling motive of citizens.

The *virtue* which is necessary to preserve a just administration and render a government stable, is *christian virtue*, which consists in the uniform practice of moral and religious duties, in conformity with the laws both of God and man. This virtue must be based on a reverence for the authority of God, which shall counteract and control ambition and selfish views, and subject them to the precepts of divine authority. The effect of such a virtue would be to bring the citizens of a state to vote and act for the *good of the state*, whether that should coincide with their private interest or not. But when or where has this virtue been possessed by all the citizens, or even by a majority of the citizens of a state? History does not authorize us to believe that such virtue has ever existed in the body of citizens in any community; or to presume that such a community will ever exist.

If such virtue as this can be introduced into a community, the opinion that intelligence and virtue will preserve a re-

public, may be well founded. But with respect to intelligence, it may be questioned whether such a portion of it can be imparted to the mass of citizens as will secure the public from the most injurious, if not fatal, mistakes. And as to genuine virtue, based on divine authority, are we authorized to expect this to exist, unless in a millennial state?

But if a correct understanding of the public interest would, in any case, secure a pure administration, under wise and impartial rulers, how is it possible to prevent deception and mistake among the people? The press must be free, and if free, it will often be used as the instrument of deception. How is this evil to be prevented? If it cannot be prevented, then the use of intelligence is defeated.

It appears to me, Sir, that there are radical errors in the opinions of our citizens in regard to the principles on which a republican government is to be founded, and the means by which it is to be supported. The constitutions of government in the United States commence with a declaration of certain abstract principles, or general and indefinite propositions; as that all men are *born free and equal*, or all men *are created equal*. But as universal propositions, can they be true? In what sense are men *born free*? If they are born under a despotic government, they are not *born free*. But in any government, children are born, subject to the control of their parents, and this by the express ordinance of the Creator. No man will question the right or the expedience of parental government; it is for the benefit of the child that he should *not* be free, till he has acquired strength to procure his own subsistence, and knowledge or wisdom to direct his voluntary actions.

The general proposition then that *all men are born free*, is the reverse of the truth, for *no person is born free*, in the general acceptance of the word *free*.

In what sense then are men born *equal*? Is it true that all men are furnished with equal force of constitution, or physical strength? Is it true that all men are endowed by the Creator with equal intellectual powers? No person will contend for an affirmative answer to these questions. Men are not formed with equal powers of body or mind; and if they were, the race would be an exception from all other works of the Creator, in which a prominent feature is diversities without end, even in the same genus and species.

Equally indefinite is the proposition that all men are entitled to the enjoyment of *life and liberty*. They are entitled to life, unless it has been forfeited; but even life is to be enjoyed, upon the conditions prescribed by law, for the enjoyment of life must be in consistency only with the public safety. The enjoyment of liberty is subject to a like restriction. No society can exist without restricting the liberty of every member by the laws or will of the community; for it is a first principle of the social state, that every member must so use his own liberty, as not to injure or impair the rights of another.

It would seem then to be clearly proved that the general principles assumed by the framers of our government, are too indefinite to be the basis of constitutional provision. The natural freedom of men must be restrained by regulations which are essential to the public safety, and to that of every individual. This freedom is *civil* liberty, that is, the

liberty which the law permits each citizen to enjoy. Even in a savage state, the liberty of each individual must be under some restraint, or no individual can be safe.

The principle then which must be the basis of a good constitution, is, that every member of the community or state is entitled to all the freedom which the laws permit, and which is compatible with the public safety. This is the right of every citizen; and in the possession of this right, every man is *equal*.

It is believed, however, that the loose, undefined sense in which the words *free* and *equal* are used in some of the American constitutions, has been and will be a source of immense evil to this country. Illiterate men will mistake the just limitation of the words, and unprincipled men will give them a latitude of construction incompatible with the peace of society.

There is, in my apprehension, a common mistake in this country, in regard to the nature of democratic and republican governments. It seems to be held as a truth not to be questioned, that a republican government is of course a *free* government, or a government which, by the very fact that it springs from the people, will certainly secure to the citizens the enjoyment of their rights.

That a proper democracy, in which the whole body of citizens constitute the legislature, is a turbulent government, is a fact too well established by historical evidence to be disputed. But it seems to be generally understood, that a government by representatives of the people, is not subject to the same evil; and that such a government will not abuse

its powers and oppress the people. In short, it is generally believed that, in a republic, liberty is safe.

One reason for this general belief may be, that the history of the nations in the old world, and particularly in Asia, has, from time immemorial, exhibited monarchs as tyrants. It seems to be taken for granted that all monarchies, all kingly governments, are tyrannies.

This, as a general fact in past ages, may be admitted. But connected with this subject, there are some popular errors which ought to be corrected.

1. The tyranny of a monarch depends on his disposition. If one man has the sole power of making laws, the government is arbitrary in form, but the administration of it may be mild or tyrannical, at the pleasure of the prince. And it often happens that a monarch administers the government in such a manner as to do equal justice, and secure to all his subjects their rights or all the liberty which they desire.
2. In modern Europe, in nations civilized, and in which a great portion of the citizens are educated men, cultivating arts and science, and carrying on trade and manufactures, monarchs cannot exercise tyrannical power. In such nations, the public sense of rights, to which the citizens are entitled, restrains kings from acts of oppression. This improved state of society, which began with the revival of learning, arts and commerce, in the thirteenth or fourteenth century, for ever precludes the possibility of the es-

tablishment and continuance of tyrannical governments in the western portion of Europe. Men understanding the principles of freedom, and possessing property, can not be reduced to the vassalage of former ages.

3. The kingdoms of France and England are not, in the true sense of the word, *monarchies*. Their governments are a mixture or union of aristocracy and republicanism. The kings are hereditary executive magistrates, but they have not the power to make a single law, and of course cannot exercise arbitrary government over the citizens. In this respect, the kings are as essentially restrained from acts of tyranny, as the president of the United States. The house of peers is an aristocratical body, possessing powers of government by virtue of title or rank; but the commons, elected by the people, are a republican body. These houses are complete checks upon each other, by which the rights of both are secured; and both are a complete check upon the king.

Now the great source of mistake in this country, is, that monarchies have generally been characterized by arbitrary and oppressive government; and particularly in rude ages and uncivilized countries, where the mass of the population have had neither learning nor property. This fact being well known, and incessantly proclaimed by our patriotic conductors of the revolution, has produced in the minds of American citizens, an extreme odium against all monarchies, leading them to make royal government and tyranny synonymous terms, and impressing the belief or

opinion that a sure remedy and the only remedy for the evil is to be found in a republican form of government.

Both these opinions, carried to the extent, are incorrect. The governments in the civilized parts of Europe, with kings at the head of them, are not tyrannies. So far from it, that the citizens in those countries consider themselves as free as they wish to be, and perfectly well protected in their rights. I leave out of this representation the oppression which the people of England suffer from old establishments and monopolies, which had their origin in ages of ignorance; for these are, in many cases, extremely oppressive. But to the form of the government, to royalty, and to the general administration of the laws, the people have no objection. On the other hand, they are strongly attached to them, and would by no means exchange the form of the government for any other.

Equally incorrect is the opinion, that a republican government is of course a free government, or one that of course will secure to the citizens all their just rights. So far is this from being true, that democracies and republics may be, and have often been, as tyrannical as monarchies.

The principle that our statesmen have universally adopted and proclaimed that the people in a state or community are the only legitimate source of power, is just; all government ought to have its origin in the will of those who are to be governed. But in the application of this principle, our theorists and statesmen have overlooked, or not sufficiently regarded one important fact, that in framing a constitution, it is as necessary to guard against the *tyranny of the people* as it is to guard against the *tyranny of kings and nobles*.

How could those distinguished men overlook the fact, that *all* men are made with like passions ; that men of all classes, whether kings, nobles, priests, or working men, have the same love of power and property, the same ambition, the same selfishness, the same jealousies ; in short, the same disposition to rise above their fellows, by advancement in wealth and power, and the same depravity or want of good principles to control their passions ? All history testifies that the people, when they possess uncontrolled power, often use that power as tyrannically as kings and nobles. Their tyranny, if not as steady, is usually more violent and inexorable than that of kings, as their passions are under less restraint from honour, education, or responsibility, and exasperated or stimulated by numbers.

From an inattention to this truth, that all men would be kings if they could, and tyrants if they durst, our patriotic fathers, while they have fortified the constitution against the introduction of kings and nobles, have not sufficiently guarded it against an abuse of power by the people. Hence the frequent outbreaks of popular tyranny ; the people, or portions of them, rising in multitudes, above all law, and violating the rights of property, and personal safety.

In connection with this subject, we may advert to a remarkable example of the influence of names or words, on the mass of people who have not discriminating or just views of men, and of the nature and tendency of political measures. The use of the word *republican* has, by its own magic, revolutionized public sentiment in this country. So popular is a republican government in this country, that the man who aims at office, or the printer who aims at ex-

tensive patronage, takes the name of a *republican*, as a sure passport to his object. This practice proceeds in general from honest views; but in the demagogue, it is often assumed to cover the most dangerous designs. The name, however, has its effect, and an artful popular man may, with this passport, travel to a throne, before the mass of a nation discover his views. Among a people jealous of power, the only way by which an ambitious man can gain *superior* and *unequal* power, is to make the people believe him to be the friend of *equal* rights and *equal* power.

It is admitted, on all hands, that the senate in the American constitutions, was designed not only to give to legislative proceedings a more full discussion of important questions, but to check and control any violent, rash and precipitate measures of the more numerous branch of the legislature. This purpose it has often accomplished. But there appears to be a defect in the mode of constituting this body, which may frustrate the design. This defect is in the election of senators by the same constituents as the representatives in the other branch. Now, the way to render the senate an inefficient check upon the house of representatives, is to bring the body of constituents to have the same views of public men and measures, and they will elect men of similar views to both houses. In this case, there is no check of one house upon the other. In many cases of legislation, this would be no evil. But in times of party violence, the want of this check, or the loss of the proper balance in the constitution may endanger the very existence of the government; or when this consequence does not follow, it may derange the operations of the government, by giving to the executive an improper exercise of power, and utterly defeating the purposes of impeachment.

The most obvious method of preserving a proper balance in the constitution, and creating an effectual check of one branch upon the other, is, to place the election of the two branches in different hands. In this country, where there are no distinct orders or ranks of men, and none can be admitted, this constitution of the two houses by different electors, may be the only mode of securing the separate independent action of the two branches.

The people of the United States do not consist of two distinct orders of men, nobles and commonalty, as is the case in England. But the distinction of rich and poor does exist, and must always exist; no human power or device can prevent it. This distinction produces jealousies, different interests and rivalry, which, if not effectually controlled by the government, may agitate the state or even overthrow it. Both classes of citizens are to be protected in their rights, and each class must have power to defend its own rights against the invasions of the other. The poorer class must be as effectually secured against the power of the rich, as the rich are against the turbulence of the populace. How this object is to be effected in this country, where there is no distinction of rank, is a problem not easily solved. But it *must* be solved; the two classes must be equally secured in their rights, and each have a complete check upon every attempt of the other to invade its rights; or there can be neither harmony nor durable tranquillity in the state.

This great object of making each class of men so independent of the other in government, as to allay jealousy and party strife, and settle every question of rivalry by the peaceable process of discussion and voting, must be

accomplished by constitutional provisions. It must not be left for each party to seek its share of power and influence by intrigue, corruption, or the influence of the press. This mode will excite perpetual feuds, engender evil passions, and incessantly agitate the public mind. The mode of preventing all such strife and agitation, must be by definite constitutional provisions.

To effect this object, the most simple process would be to separate the electors into two classes, the qualifications of one of which shall be superior age, and the possession of a certain amount of property ; while the other class of voters shall comprehend those who have not the same qualifications. These two classes may be independent of each other in elections, and their representatives compose different houses, each with a negative upon the acts of the other.

Some provision of this kind will probably be found indispensable to the due protection of the rights of the different classes of citizens ; and universal suffrage, without some such provision, will destroy that equality of rights which our constitution was intended to maintain.

To understand the operation of universal suffrage, we must consider that there are two kinds of rights to be secured by government—the *rights of person* and the *rights of property*. The *rights of person* are *equal*, in all classes of men. The protection of the person of the poor man is of as high a nature, and of as much importance in a code of laws, as the protection of the person of the rich man ; and the one must be as well guarded by the constitution and laws, as the other. In this respect, both classes of men have an equal interest in the government.

Not so with regard to the rights of property. The man who has half a million of dollars in property, and pays five hundred or a thousand dollars annually to support the government and laws which *protect the poor man* as well as the rich, has a much higher interest in the government, than the man who has little or no property, and pays *nothing for the protection of his own person*, and the property of others. Without some provision recognizing this distinction, and giving to men of property the means of securing it, and regulating the disposal of it, without being wholly subject to the power of those who have little or no property, universal suffrage may become the instrument of injustice to the most enormous extent. What can be more absurd and more inconsistent with a republican government, whose principle is the security of *equal rights*, than that the owners of property should not have the right to govern it; or that those who have no property or the least share of it, should have the power to control the property of others! A constitution based on such a principle, must sooner or later produce consequences fatal to just rights. And it is of no use to the poor: for in the protection of *personal rights* all men have an equal interest, and the rich have the same motives to protect the rights of the poor, as they have to protect their own. But it is otherwise with regard to the *rights of property*, which the poor have not the same motives to protect, as those have who own it; and nineteen twentieths of the laws of all commercial states respect property.

The constitution of the executive department of government involves questions of the highest concern.

From the principle that the people or great body of citizens in a free state are the sources of all legitimate power in government, it results that in them resides the right of selecting, not only the men who mature the laws, but the men who are to execute them. The government of some of the New England colonies, from their first institution, recognized this right, and it is now recognized in the constitution of the United States, as also by all the state constitutions.

On the assumed principle, that the electors in a great nation can *know* and will *do* what is right or expedient in every case of exercising the elective franchise, this provision in a republican government is just and wise. But the premises here supposed have not been found to exist in all the experiments of elective governments; and the factions which have been generated by competitions for the high office of chief magistrate, have produced such tremendous evils, that most nations have a settled conviction that it is better to trust to hereditary succession for a chief magistrate, than to a popular election. The history of Poland furnishes valuable materials for judging correctly on this subject.

The people of this country are making the experiment of electing their chief magistrates and most of their executive officers. The result of this experiment is not finally determined; and prudence requires that we should not confidently predict what the issue will be.

In the mean time, it may not be improper to suggest some thoughts on the subject, with a view to call public attention to the evils which exist, and to the remedy.

The first suggestion is, that in a country of such extent as the United States, it is difficult, not to say impracticable, for the whole body of electors to have a sufficient knowledge of the candidates to form an accurate estimate of their respective characters, and be enabled to select the most suitable person. The difficulty is increased, ten fold, by the representations given of their characters by the friends and the opposers of the different candidates, through the medium of the press.

The second suggestion is, that a great mass of people are and always must be very incompetent judges of the qualifications necessary for the chief magistrate of a great nation. The populace are often influenced by the splendid achievements, more than by the solid talents, of the candidates; yet a man may gain a great victory on land or water, without the most ordinary qualifications for a chief magistrate.

The third suggestion is, that when party spirit is violent, the people imbibe such strong prejudices as to disqualify them for exercising a temperate, unbiassed judgment.

There is a great defect in the Constitution of the United States, which, if permitted to exist, will ultimately shake the government to its center. This defect is, the want of some effectual provision to prevent candidates from seeking the office of chief magistrate by corrupt and illegal means. So long as the president has the bestowment of most of the offices, and the power of removal from office, at pleasure, the most daring and unprincipled intriguer for the office has the best chance of success. It is hardly to be conceived

how wide the avenues of corruption and undue influence are laid open by the possession of these powers. These avenues must be closed, or the most important feature in a republican government, the right of election, will be defaced, annihilated, or converted into an instrument of ruin.

There is perhaps no mistake as to the proper mode of constituting and maintaining a republic, which is so menacing to the purity and stability of our institutions, as that of vesting the right of electing executive and judicial officers in the people; and the more frequent the elections, the more dangerous will be the exercise of this right. There appears to be no method of weakening the execution of the laws, so effectual, as to make executive and judicial officers dependent for their offices on annual elections by the people. When a law is popular, and all men concur in the propriety of its execution, the law will be executed. The murderer, the robber, and the thief, will be punished, by universal consent. But when a law bears hard upon any portion of citizens, the officers will often wink at violations rather than risk the loss of their re-election. If there are exceptions to this remark, yet it will generally prove to be true.

The independence of the judiciary has been a theme of eulogy ever since it was secured to the judges of the higher courts in Great Britain. It is said to have been established with a view to secure impartial decisions, in opposition to the influence of the crown. Be it so; but it is equally necessary to raise the judges above the influence of the citizens in a republican government. It is even more necessary, as the danger of losing the office by offending the electors, occurs more frequently and steadily in a

government like ours, than the danger of losing the office in Great Britain does by offending the king. And it is surprising that the obvious good effects of this independence in judges, in securing unbiassed decisions, have not induced our legislators to extend the same independence to inferior courts, and to many executive officers.

It is a mistake, and a most mischievous one, to suppose that annual or frequent elections are the proper correctives of mal-administration in judges and executive officers. The proper correctives are impeachment or other punishment; not the popular odium against an officer which may be excited without just cause, and even by the most meritorious acts of the officer in the faithful discharge of his duty.

The proper rule in our governments appears to be this. The citizens composing the state, being the sources of power, should be the constituents of the legislature, the supreme acting power of the state; but the legislature or a council designated for the purpose, should be the appointing power; and also the impeaching or punishing power. This is the fact now in regard to many officers, in our state governments. The appointing power should not be invested in a single magistrate elected by the people, unless some provision can be made to restrain him effectually from using the power to secure his election. And how is this to be done?

The office of president is a prize of too much magnitude not to excite perpetual dissensions; and if the contentions for the office of chief magistrate, do not ultimately overthrow our constitution, it will be a miracle. It is de-

sirable, however, that the experiment should be fully tried, to determine whether our government, with this feature, can be rendered permanent.

A mode of electing the president *may* be devised which shall preclude the possibility of his using undue influence to obtain the office. But the practicability of introducing such a mode is questionable.

There are errors of opinion on the subject of republican government so long cherished, and so interwoven with the habits of thinking among our citizens, that reasoning will not remove or correct them. The opinion that the rich are the enemies and oppressors of the poor, industriously propagated by designing men for their selfish purposes; and the opinion that all incorporated companies are aristocratic in their tendency, are among the false and most pernicious doctrines that ever cursed a nation.

Equally injurious to the public interest is the attempt to excite jealousies against learning and the seminaries in which young men are to be qualified for the professions and for the higher offices of government. This war against superior attainments in science, and against large possessions of property, is a most suicidal attempt to destroy the dignity of the state, degrade our public character, and check the spirit of improvement. The effect is, to raise to the higher offices, men wholly incompetent to discharge their duties with honour and advantage. To these dispositions we may ascribe the derangement of our financial concerns, and the disturbance of the usual course of business, producing unparalleled distresses in the community. The extensive and complicated operations of finance, in a great

commercial nation, can be managed only by men of long practical experience and observation. Men of narrow views, scanty information, and strong prejudices, cannot regulate commerce and finance. Very few of our public characters are competent to this task.

Another most pernicious opinion prevails, that the legislator is to follow the wishes of his particular constituents, called the *people*. This opinion, reduced to practice, changes the legislator into a mere agent or attorney of the district in which he is elected. This is to invert the whole order of things in legislation. The man who is chosen to the legislature by a city, town, or county, is not elected to make laws for that particular district, but for the whole state. He then becomes the representative of the state, and is bound by his duty and his oath, to act for the interest of the whole state. He is not to be governed by the wishes or opinions of a particular district, but by a view of all the interests of the several parts of the state. Probably no rule of public duty is more frequently violated than this.

In addition to this consideration, it must be observed that, in most cases, a man's constituents in a particular district, have not the means of forming correct opinions, and are as likely to be wrong as right. Examples are continually presented to us of candidates for election pledging themselves if elected to vote for or against a particular measure, when the opinions of their constituents are mere prejudices, instilled into their minds by false reasoning and misrepresentations, and the measures they expect their representative to advocate, operate directly against their own interest.

This practice of looking to the *people* for direction destroys the independence of the representative, and must often reduce him to a mere machine, obliging him to act in direct opposition to his own views of what is right and expedient.

The object of assembling representatives from all parts of a state, is to collect a knowledge of all the interests of the whole community; to unite the counsels of intelligent men, and from the concentrated wisdom of the whole, to adopt measures which shall promote the general welfare. The practice of taking the opinions or wishes of a particular part of the state, as the binding rule of action, may and often does defeat the object of collecting the wisdom of the whole. It is an inversion of the proper order of legislation, in which wisdom should be drawn from the collected views of the whole state, and not from the partial views of a distinct portion.

Another very common error is, to consider offices as created for the benefit of individuals, rather than for the state. From this mistake proceeds the demand of rotation in office. In this particular men do not make an important, but just distinction, between legislative offices, and offices in the other departments of government. Legislators may be changed frequently, without inconvenience or prejudice to the public. It is not necessary nor expedient to change every year, for experience in legislation is highly useful. But a part of the legislative body may be changed every year, often to advantage.

But to subject executive, ministerial, and judicial offices to frequent changes, for the sake of distributing the

salaries and emoluments, among numbers, is a most injurious practice. It often displaces officers who are dependent on the salaries or fees for the support of their families, and who are thus deprived of means of living, when there is no pretence of unfaithfulness, and when the incumbent is better qualified to discharge the duties of the office than any other man.

But this demand of rotation in executive offices is fruitful of evils to the community. It promotes that scrambling for office in which all the worst passions of men are called into action; in which characters are vilified, neighbourhoods disturbed, and the harmony of society is violated.

It is for the peace of society, for the interest of the incumbents in office, and for the good of the community, that all executive and judicial officers should hold their offices during good behaviour. No man should be removed from office, merely to make a vacancy for another man. It is a species of injustice to faithful officers, which ought to be reprobated by every good citizen.

Much less ought faithful officers to be removed on account of their political opinions. The practice of constraining men to vote for a particular candidate, under the penalty of losing his means of subsistence, is one of the wickedest and meanest practices that ever disgraced a representative government. It is intolerance, as detestable in principle as the punishment of the rack, to compel men to support a religious establishment. It is to compel men to violate their consciences, and assume the garb of hypocrites. It is a practice that destroys the independence of citizens,

and actually makes them the slaves of a party. And it is one of the most extraordinary instances of self-deception, which is exhibited in human life, that men, professing to be the warmest friends of a republican government, and of equal rights, should subject their fellow citizens to this species of injustice, and triumph in the practice.

The doctrine that the *spoils belong to the victors*, originated in savagism. The original state of savages is a state of war for plunder, and the ancient barbarians of the north of Europe avowed the object for which they invaded more civilized nations. “Quum illi se in armis jus ferre, et omnia fortium virorum esse, ferociter dicerent.”—*Livy*. 5. 36. The Gauls declared that they bore right on the point of their swords, and that every thing belongs to the brave.

Now what is the difference in principle between the Gauls who fought to rob their enemies of their cattle and their lands, and a political party that contends by all means, moral and immoral, for victory in election, to strip their opposers, and engross all the emoluments of the government? And how can men claim to be republicans, who perpetually struggle to deprive their opposers of the equal benefits of government, and engross the whole for themselves and their adherents? A practice of this kind is a species of tyranny, which tarnishes the honour of the state, corrupts the citizens, and agitates the community with endless contentions and animosity.

But other principles of a still more alarming tendency begin to prevail. One is, that there can be no such thing as *vested rights*, but that all grants of a legislature may be revoked by a subsequent legislature at pleasure.

This principle seems to have had its origin in the opinions of Mr. Jefferson, which are found in his published letters. See Vol. III. p. 27. 426. and Vol. IV. 196. 275. 396.

The general principle adopted by Mr. Jefferson is, that *the earth belongs in usufruct to the living*; that the dead have neither power nor rights over it; that no man can by natural right oblige the lands he occupied, or the persons who succeed him in that occupation, to the payment of debts contracted by him, for if he could, he might, during his own life, eat up the usufruct of the lands for several generations to come, and then the lands would belong to the dead, and not to the living; that what is true of every member of the society individually, is true of them all collectively; since the rights of the whole can be no more than the sum of the rights of the individuals; that each generation may be considered as a distinct nation, with a right, by the will of its majority, to bind themselves, but none to bind the succeeding generation; that the period of a generation is thirty-four years; that a majority of a generation therefore will be dead at the end of eighteen years and eight months; and that at nineteen years from the date of a contract, the majority of contractors (the generation) are dead and their contract with them. Mr. Jefferson then supposes a case in which a majority of a generation borrow a sum of money equal to the fee simple value of a state, and consume it in eating, drinking or quarreling and fighting. From this he infers, that in nineteen years, when the majority are dead, there is an end of the debt.

This theory seems to have been suggested by a consideration of the evil of an enormous national debt, like that

of Great Britain; and the alarm which the writer felt, lest the United States should be involved in a like calamity. At any rate, it is the most extraordinary instance of false premises and fallacious reasoning that ever entered the head of an enthusiast.

What is a generation? A multitude of individuals, old and young, unconnected by any legal or political tie which can constitute them a person in law, or a corporation, and of course incapable of contracting debts or expending money, as a body; in short, incapable of doing any act as a body. A generation can neither make a law nor repeal it.

And what sort of social right is that which an individual has to purchase or sell lands and contract debts, when the mere fact of the death of the majority of the society, an event over which he can have no control, dissolves the contract, and expunges the debt? And how is the fact, at any time, to be ascertained, that a majority are dead? A man who can seriously reason in this manner is worthy of a strait jacket.

But the case of a state or its legislature stands on different principles. A state is a perpetual corporation; all the members of it are united by consent or compact in one body, constituting a person in law, capable of enacting laws, and repealing them, and of contracting and paying debts. This corporation never dies; and the powers it had the last year, or twenty or a hundred years ago, are the same powers which it possesses this year. The act of the state, fifty years ago, is the act of the state this year; and a contract made fifty years ago, binding the state *then*, continues to bind the same state *now*. A change of the mem-

bers of the corporation makes no change in the being or powers of the body.

These principles, known and established by every government on earth, show in what cases one legislature can repeal or amend the act of a former legislature.

The legislature is the *acting state*; it is the only form of the state in which it can act at all. A convention is a legislature elected for a particular purpose; and for that purpose, the framing of a constitution, organizing the several departments of the government, it may be convenient to consider it as a body having powers superior to those of an ordinary legislature, and particularly when the constitution is ratified by the whole body of citizens, acting as individuals.

But in ordinary cases of legislation, the legislature is the supreme power, or the *state* in the only form in which it can act, as a state.

This body then has always the same powers, and the legislature of this year may repeal a law enacted the last year. The reason is, that a *law* is the will of the state, acting on *itself* or on *its own members*, and the body that repeals a law is the same body that enacted it.

But in the case of charters granted or debts contracted, there are *two parties*, the state and the individuals to whom a grant or a promise is made; there are *two wills* concerned, both of which are essential to the act. In this case *one party* has no better right to annul a grant or violate a promise, than one private person has to annul a covenant

which he has made with another. Nor does it make any difference, whether the state acts by an ordinary legislature or by a convention, for, in both cases, the state is the *same party*. A change of representation no more alters the *identity of the party* to a contract, than a man changing his coat makes him another man.

It is not unusual for a state, in granting charters, to reserve the right of repealing the act—a reservation which shows that legislatures have always considered a grant without such reservation as not repealable. Indeed all the principles of justice and right, in regard to the contracts of individuals with each other, are applicable to grants and contracts of states.

The citizen or citizens who accept a charter, with a clause of reservation as above stated, accept the grant on the condition specified, and no injury is done by the legislature in taking back the grant.

The doctrine that there can be no vested rights subverts the foundation of society ; and a country, adopting and acting on that doctrine, would soon be depopulated, or compelled to submit to be governed by a military force.

Many of our public evils have evidently proceeded from false opinions, propagated by some of the founders of our government. Their ideas of a free government were not always correct. Mr. Jefferson, and many other distinguished men, believed, that men can govern themselves without a master ; meaning, probably, without a king. True, but they cannot govern themselves without a controlling power, a force of some kind or other that shall be sufficient to keep them in subjection. If the citizens of a state will

voluntarily create such a power, they can be governed; if they will not, they can not be governed; that is, there can be no regular administration of just laws without a coercive power. If men will not have a king, they must have laws and magistrates, armed with power to bring them all into obedience. If this is not the fact, there is no free government.

We hear it constantly proclaimed, that men may be governed by reason. Why then have they never before been governed by reason? Why do not men govern their social actions without law? Why do not parties in controversy settle their private disputes by the dictates of their reason? Why are courts, consisting of men uninterested in the controversies of individuals, established to decide upon questions of private rights? If men are capable of governing themselves by reason, why have all democratic and republican governments come to ruin? Why have they not been permanent?

Corruption, it will be said, has ruined them. True; and this is conceding the whole question. It is the depravity of man which has ruined all former free governments, and *which will ruin ours.*

We have already had terrible examples of the manner in which men govern themselves without a master, that is, not only without a king, but without a competent force of law. And it is not a little singular, that when the citizens of Baltimore had suffered immensely by popular violence, they had no remedy except to organize a military force of volunteers for their protection. What is more worthy of notice, they gave the command to one who had, all his life,

been devoted to democratic principles, and who thus became the *master* of the people, who were supposed to be able to govern themselves *without a master*.

The truth is, many of our leading political men, during and after the revolution, were visionary enthusiasts, who had read history without profit, or due application of historical facts. Their ideas were crude, and utterly at variance with the truth of history, and with all experience. They seem to have supposed, that to obtain liberty, and establish a free government, nothing was necessary but to get rid of kings, nobles, and priests; never considering that the same principles of human nature, and the same disposition to tyrannize, exist in all other men, and that the people, when they have the power, will abuse it, and be as tyrannical as kings. This mistake has led to deplorable consequences; one of which is, that people mistake the nature of tyranny or oppression, supposing that the sovereign people may do that which a king cannot do without oppression. One judge has publicly declared, that if a small number of persons are guilty of violating law, they may be indicted; but if a great multitude outrage law and rights, they cannot be indicted or punished. It is painful to the friends of a republic that such a monstrous doctrine should be uttered by any man whose duty is to carry laws into effect.

We continually hear eulogies on the happy condition of the citizens of the United States; resulting from the freedom of our government. These eulogies, to a certain extent, are well founded. Our active, industrious, and enterprising citizens, possessing a vast extent of fertile land, growing and profitable manufactures, and a commerce that reaches every spot on the globe, enjoy blessings be-

yond those of any other country. But, on the other hand, we are subjected to injustice and tyranny in a thousand ways. For thirty years past, party spirit has produced a constant series of oppression; the triumphant party using its power to deprive the defeated party of its rights. The proscriptions inflicted on men in office for holding political principles different from the dominant party, are among the most detestable acts of tyranny.

The infringements of the most solemn treaties, the palpable violations of the constitution, and the usurpation of unconstitutional powers by the executive, exhibit most woful departures from the genuine principles of a free government. And it may be questioned, whether any kingdom in the civilized part of Europe has suffered so many violations of public and private rights, as the people of the United States have suffered within thirty years, without an attempt to punish their oppressors.

And now we read, in our public prints, repeated complaints of misrule; and out-breakings of popular violence; and the writers seem to be surprised at such events. They do not consider, that these outrages are the *natural*, not to say *necessary*, consequences of the doctrines which *they themselves*, in many cases, have been preaching or eulogizing ever since the constitution was formed. Such men are beginning to learn that men must have something to govern them besides *reason*.

Most persons seem to think, that the election of a good president will remedy all our evils. This is a vain hope; a temporary alleviation is all that is to be expected from the best chief magistrate that the United States can

find. There are defects in our form of government, and errors in popular opinions, that no administration can rectify; and until such defects are amended, and such errors corrected, we shall continue to be a divided, distracted community; incessantly agitated by violent factions; each in its turn triumphing and oppressing the other.

One thing is certain, that the election of the chief magistrate must be conducted in some way that shall effectually prevent intriguing for the office. If this cannot be effected, the constitution, for securing a just administration and equal rights, is not worth a straw.

Another thing is equally certain, that unless executive and judicial officers can be placed beyond the influence of popular caprice, many of them at least will be time-servers, the laws will be feebly executed, and impartiality will be banished from our tribunals of justice.

Must we, then, despair of the republic? No, sir, not yet. The people of this country are republican in principle; and will not abandon the hope that a republican government may be sustained. But, sir, that hope *must* be abandoned, unless the great men of our country will lay aside their party strife, and unite in some vigorous effort to amend the defects of our constitution. The leading men, sir, must cease to expend their breath in speeches about banks and monopolies and metallic currency, and mount up to the source of our public evils. There only can be applied the catholicon which shall be efficacious in restoring to the confederacy health and soundness.

MARCELLUS.